



## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

### **50 CFR Part 17**

**[Docket No. FWS–R2–ES–2013–0023]**

**[4500030113]**

**RIN 1018–AY50**

### **Endangered and Threatened Wildlife and Plants; Listing Determination for the New Mexico Meadow Jumping Mouse**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to list the New Mexico meadow jumping mouse (*Zapus hudsonius luteus*) as an endangered species under the Endangered Species Act (Act). If we finalize this rule as proposed, it would extend the Act's protections to this subspecies and its critical habitat. The effect of these

regulations will be to conserve the New Mexico meadow jumping mouse and protect its habitat under the Act.

**DATES:** We will accept comments received or postmarked on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. In the Search box, enter FWS–R2–ES–2013–0023, which is the docket number for this rulemaking. You may submit a comment by clicking on “Comment Now!”.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2013–0023; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments **only** by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Wally Murphy, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE, Albuquerque, NM 87113; by telephone 505–346–2525; or by facsimile 505–346–2542. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

#### **SUPPLEMENTARY INFORMATION:**

##### **Executive Summary**

*Why we need to publish a rule.* Under the Act, if a species is determined to be an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. Critical habitat shall be designated, to the maximum extent prudent and determinable, for any species determined to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designations and revisions of critical habitat can only be completed by issuing a rule. **Elsewhere in today's Federal Register** (and available

online at [www.regulations.gov](http://www.regulations.gov) at Docket Number FWS–R2–ES–2013–0014), we propose to designate critical habitat for the New Mexico meadow jumping mouse (*Zapus hudsonius luteus*) under the Act.

*This rule consists of:* A proposed rule to list the New Mexico meadow jumping mouse as an endangered species. The New Mexico meadow jumping mouse is currently a candidate species for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a listing regulation has been precluded by other higher priority listing activities. This rule reassesses all available information regarding status of and threats to the New Mexico meadow jumping mouse.

*The basis for our action.* Under the Act, we can determine that a species is an endangered or threatened species based on whether we find that it is in danger of extinction throughout all or a significant portion of its range now (endangered) or likely to become endangered in the foreseeable future (threatened). As part of our analysis we consider whether it is threatened or endangered because of any factors affecting its continued existence.

*We will seek peer review.* We are seeking comments from knowledgeable individuals with scientific expertise to review our analysis of the best available science and application of that science and to provide any additional scientific information to improve

this proposed rule. Because we will consider all comments and information received during the comment period, our final determinations may differ from this proposal.

### **Information Requested**

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The New Mexico meadow jumping mouse's biology, range, and population trends, including:

- (a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;
- (b) Genetics and taxonomy;
- (c) Historical and current range including distribution patterns;
- (d) Historical and current population levels, and current and projected trends; and
- (e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Factors that that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made “solely on the basis of the best scientific and commercial data available.”

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments **only** by the methods described in **ADDRESSES**.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

The May 2013 New Mexico Meadow Jumping Mouse Species Status Assessment Report (SSA Report; Service 2013, entire; see **Status Assessment for the New Mexico Meadow Jumping Mouse** section below), as well as comments and materials we receive and other supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

#### **Previous Federal Actions**

On December 6, 2007, the New Mexico meadow jumping mouse (*Zapus hudsonius luteus*) (jumping mouse) was made a candidate for listing (72 FR 69033) under the Act. In 2008, we received a petition to list the jumping mouse, which was already on the candidate list, and published our petition finding on December 10, 2008 (73 FR 75176). Because the New Mexico meadow jumping mouse was previously identified through our candidate assessment process, the species had already received the equivalent of a substantial 90-day finding and a warranted, but precluded, 12-month finding (see 72 FR 69033, December 6, 2007). Through the annual candidate review process (73 FR 75176, December 10, 2008; 74 FR 57804, November 9, 2009; 75 FR 69222, November 10, 2010; and 76 FR 66370, October 26, 2011), the Service continued to solicit information from the public regarding life history and current status of the species, historical and current distribution and abundance, potential factors for the species decline (e.g., habitat loss, drought), and ongoing conservation measures being taken to protect the species.

## **Status Assessment for the New Mexico Meadow Jumping Mouse**

### *Introduction*

The SSA Report (Service 2013, entire), available online at [www.regulations.gov](http://www.regulations.gov), Docket No. FWS–R2–ES–2013–0023, provides a thorough assessment of jumping mouse biology and natural history and assesses demographic risks (such as small population sizes), threats, and limiting factors in the context of determining viability and risk of extinction for the species. In the SSA Report, we compile biological data and a description of past, present, and likely future threats (causes and effects) facing the New



Mexico meadow jumping mouse. Because data in these areas of science are limited, some uncertainties are associated with this assessment. Where we have substantial uncertainty, we have attempted to make our necessary assumptions explicit in the SSA Report. We base our assumptions in these areas on the best available information. Importantly, the SSA Report does not represent a decision by the Service on whether this taxon should be proposed for listing as a threatened or endangered species under the Act. The SSA Report does, however, provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its regulations and policies.

#### *Summary of Biological Status and Threats*

Our SSA Report documents the results of the comprehensive biological status review for the New Mexico meadow jumping mouse (jumping mouse) and provides a thorough account of the species' overall viability and, conversely, extinction risk (Service 2013, entire). The following is a summary of the results and conclusions from the SSA Report.

The jumping mouse is a small mammal whose historical distribution likely included riparian wetlands along streams in the Sangre de Cristo and San Juan Mountains from southern Colorado to central New Mexico, including the Jemez and Sacramento Mountains and the Rio Grande Valley from Espanola to Bosque del Apache National Wildlife Refuge, and into parts of the White Mountains in eastern Arizona.

In conducting our status assessment we first considered what the jumping mouse needs to ensure viability. We generally define viability as the ability of the species to persist over the long term and, conversely, to avoid extinction. We next evaluated whether the identified needs of the jumping mouse currently are available and the repercussions to the species when fulfillment of those needs is missing or diminished. We then consider the factors that are causing the species to lack what it needs, including historical, current, and future factors. Finally, considering the information reviewed, we evaluate the current status and future viability of the species in terms of resiliency, redundancy, and representation.

Resiliency is the ability of the species to withstand stochastic events (arising from random factors such as weather, flooding, or fire) and, in the case of the jumping mouse, is best measured by habitat size. Redundancy is the ability of a species to withstand catastrophic events by spreading the risk and can be measured through the duplication and distribution of resilient populations across the range of the jumping mouse. Representation is the ability of a species to adapt to changing environmental conditions and can be measured by the breadth of genetic diversity within and among populations and the ecological diversity of populations across the species' range. In the case of the jumping mouse, we evaluate representation based on the extent of the geographical range as an indicator of genetic and ecological diversity. The main areas of uncertainty in our analysis include the minimum amount of suitable habitat needed to support resilient populations and the number of redundant populations needed to provide for adequate redundancy and representation.

Our assessment concluded that the jumping mouse has an overall low viability (probability of persistence) in the near term (between now and the next 10 years) and a decreasing viability in the long-term future (beyond 10 years). In this summary, we present an overview of the comprehensive biological status review. A detailed discussion of the information supporting this overview can be found in the SSA Report.

For the New Mexico meadow jumping mouse to be considered viable, individual mice need specific vital resources for survival and completion of their life history. One of the most important aspects of the jumping mouse life history is that it hibernates about 8 or 9 months out of the year, longer than most mammals. Conversely, it is only active 3 or 4 months during the summer. Within this short timeframe, it must breed, birth and raise young, and store up sufficient fat reserves to survive the next year's hibernation period. In addition, jumping mice only live 3 years or less and have one small litter annually with seven or fewer young, so the species has limited capacity for high population growth rates due to this low fecundity. As a result, if resources are not available in a single season, jumping mice populations would be greatly stressed.

The jumping mouse has exceptionally specialized habitat requirements to support these life-history needs and maintain adequate population sizes. Habitat requirements are characterized by tall (averaging at least 61 cm (24 in)), dense riparian herbaceous vegetation (plants with no woody tissue) primarily composed of sedges (plants in the Cyperaceae Family that superficially resemble grasses but usually have triangular stems)

and forbs (broad-leafed herbaceous plants). This suitable habitat is found only when wetland vegetation achieves full growth potential associated with perennial flowing water. This vegetation is an important resource need for the jumping mouse because it provides vital food sources (insects and seeds), as well as the structural material for building day nests that are used for shelter from predators. The jumping mouse must have rich, abundant food sources during the summer so it can accumulate sufficient fat reserves to survive their long hibernation period. In addition, individual jumping mice also need intact upland areas (areas up gradient and beyond the floodplain of rivers and streams) adjacent to riparian wetland areas because this is where they build nests or use burrows to give birth to young in the summer and to hibernate over the winter. Some uncertainty exists about the particular location of hibernation sites relative to riparian areas.

These suitable habitat conditions need to be in appropriate locations and of adequate sizes to support healthy populations of the jumping mouse. Historically, these wetland habitats would have been in large patches located intermittently along long stretches of streams. The ability of jumping mouse populations to be resilient to adverse stochastic events depends on the robustness of a population and the ability to recolonize if populations are extirpated (the loss of a population or a species from a particular geographic region). Because counting individual mice to assess population sizes is very difficult and data are unavailable, we can best measure population health by the size of the intact, suitable habitat available.

In considering the area needed for maintaining resilient populations of adequate size with the ability to endure adverse events, we estimate that resilient populations of jumping mice need suitable habitat in the range of at least about 27.5 to 73.2 ha (68 to 181 ac) of along 9 to 24 km (6 to 15 mi) of flowing streams, ditches, or canals. The minimum area needed is given as range due to the uncertainty of an absolute minimum and because local conditions within drainages will vary. This distribution and amount of suitable habitat would allow for multiple subpopulations of jumping mice to exist along drainages and would provide for sources of recolonization if some areas were extirpated due to disturbances. The suitable habitat patches must be relatively close together because the jumping mouse has limited dispersal capacity for natural recolonization. Rangewide, we determined that the jumping mouse needs at least two resilient populations (where at least two existed historically) within each of eight identified geographic conservation areas. This number and distribution of resilient populations is expected to provide the species with the necessary redundancy and representation to provide for viability.

The jumping mouse life history (short active period, short lifespan, low fecundity, specific habitat needs, and low dispersal ability) makes populations highly vulnerable to extirpations when habitat is lost and fragmented. Based on historical (1980s and 1990s) and current (from 2005 to 2012) data, the distribution and abundance of the New Mexico meadow jumping mouse has declined significantly rangewide. The majority of local extirpations have occurred since the late 1980s to early 1990s as we found about 70 formerly occupied locations are now considered to be extirpated.

Since 2005, researchers have documented 29 remaining populations spread across the 8 conservation areas (2 in Colorado, 15 in New Mexico, and 12 in Arizona). Nearly all of the current populations are isolated and widely separated, and all of the 29 populations located since 2005 have patches of suitable habitat that are too small to support resilient populations of jumping mouse. None of them are larger than the needed 27.5 to 73.2 ha (68 to 181 ac), and over half of them are only a few acres in size. In addition, 11 of the 29 populations documented as extant since 2005 have been substantially compromised since 2011 (due to water shortages, excessive grazing, or wildfire and postfire flooding), and these populations could already be extirpated. Seven additional populations in Arizona may also be compromised due to postfire flooding following large recent wildfires. At this rate of population extirpation (based on known historical population losses and possible recent population losses) the probability of persistence of the species as a whole is severely compromised in the near term.

Four of the eight conservation areas have two or more locations known to be occupied by the mouse since 2005, but all are insufficient (too small) to support resilient populations. The remaining four conservation areas have only one known location occupied by the mouse since 2005, and each population is insufficient (too small) to be resilient. Therefore, although researchers have some uncertainty about population sizes of extant localities, the jumping mouse does not currently have the number and distribution of resilient populations to provide the needed levels of redundancy and representation (genetic and ecological diversity) for the species to demonstrate viability.

We next analyzed the past, present, and likely future threats (causes and effects) that may put jumping mouse populations at risk of future extirpation. Because the jumping mouse requires such specific suitable habitat conditions, populations have a high potential for extirpation when habitat is altered or eliminated. And because of the current conditions of isolated populations, when localities are extirpated there is little or no opportunity for natural recolonization of the area due to the species' limited dispersal capacity.

We found a significant reduction in occupied localities likely due to cumulative habitat loss and fragmentation across the range of the jumping mouse. The past and current habitat loss has resulted in the extirpation of historical populations, reduced the size of existing populations, and isolated existing small populations. Ongoing and future habitat loss is expected to result in additional extirpations of more populations. The primary sources of past and future habitat losses are from grazing pressure (which removes the needed vegetation) and water management and use (which causes vegetation loss from mowing and drying of soils), lack of water due to drought (exacerbated by climate change), and wildfires (also exacerbated by climate change). Additional sources of habitat loss are likely to occur from scouring floods, loss of beaver ponds, highway reconstruction, residential and commercial development, coalbed methane development, and unregulated recreation.

These multiple sources of habitat loss are not acting independently, but likely produce cumulative impacts that magnify the effects of habitat loss on jumping mouse populations. Historically, larger connected populations of jumping mice would have been able to withstand or recover from local stressors, such as habitat loss from drought, wildfire, or floods. However, the current condition of small populations makes local extirpations more common. And the isolated state of existing populations makes natural recolonization of impacted areas highly unlikely or impossible in most areas.

Considering the species' biological status now and its likely status into the future, without active conservation (i.e., grazing management and water management) existing populations are vulnerable to extirpation (at least 11 have already undergone substantial impacts since 2011) and, therefore, the species as a whole is currently at an elevated risk of extinction. None of the 29 populations known to exist since 2005 is of sufficient size to be resilient. Assuming this rate of population loss continues similar to recent years, the number of populations could be severely curtailed in the near term eliminating the level of redundancy needed to withstand catastrophic drought and wildfire, along with the additive impacts of multiple threats. In addition to past sources of habitat loss, ongoing grazing, water shortages, and high-impact wildfire (the latter two exacerbated by climate change), in addition to localized actions, will continue to put all of the remaining locations at considerable risk to extirpation in the near term (between now and the next 10 years) and increasing over the long term. In considering the needed level of representation, while sufficient diversity likely still exists across the eight conservation areas, the species representation is relatively low because none of these conservation



areas currently have resilient populations. Therefore, we conclude that the overall probability of persistence is low in the near term and decreasing in the future due to the lack of adequate resiliency, redundancy, and representation.

## **Determination**

### *Standard for Review*

Section 4 of the Act, and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(b)(1)(a), the Secretary is to make threatened or endangered determinations required by subsection 4(a)(1) solely on the basis of the best scientific and commercial data available to her after conducting a review of the status of the species and after taking into account conservation efforts by States or foreign nations. The standards for determining whether a species is threatened or endangered are provided in section 3 of the Act. An endangered species is any species that is “in danger of extinction throughout all or a significant portion of its range.” A threatened species is any species that is “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” Per section 4(a)(1) of the Act, in reviewing the status of the species to determine if it meets the definitions of threatened or endangered, we determine whether any species is an endangered species or a threatened species because of any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational

purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence.

#### *Proposed Listing Status Determination*

Based on our review of the best available scientific and commercial information, we conclude that the New Mexico meadow jumping mouse is currently in danger of extinction throughout all of its range and, therefore, meets the definition of an endangered species. This finding, explained below, is based on our conclusions that the species exhibits low viability as characterized by having no resilient populations, resulting in low overall representation across the species range and no level of redundancy. We found the jumping mouse is at an elevated risk of extinction now and no data indicate that the situation will improve without significant conservation intervention. We, therefore, find that the jumping mouse warrants an endangered species listing status determination.

On the basis of our biological review documented in the SSA Report assessment, we found that the species is inherently vulnerable to population extirpations due to their short active period, short lifespan, low fecundity, specific habitat needs, and low dispersal ability (Factor E). The species is currently limited to at most 29 small, isolated populations, all of which are incapable of withstanding adverse events, and, therefore, are not resilient (Factor E). This total is reduced from nearly 100 locations known historically. Of these 29 populations where the jumping mice have been found extant since 2005, at least 11 populations have been substantially compromised in the past 2

years and 7 others may have been affected by recent wildfires. Because these populations have been compromised, the actual current number of extant populations may already be less than 29, and other populations are expected to be lost, placing the species at a higher risk of extinction.

The remaining small, isolated jumping mouse populations are particularly threatened with extirpation from habitat loss and modifications (Factor A). The main sources of habitat loss, degradation, and modification, include grazing pressure (which removes the needed vegetation), water management and use (which causes vegetation loss from mowing and drying of soils), lack of water due to drought (exacerbated by climate change), and wildfires (also exacerbated by climate change). Additional sources of habitat loss are likely to occur from floods, loss of beaver ponds, highway reconstruction, residential and commercial development, coalbed methane development, and unregulated recreation.

In addition to the individual sources of habitat loss and modification under Factor A, the cumulative effects of the multiple sources of habitat loss are acting on populations such that the effects on the jumping mouse and their immediacy are significant throughout its entire current range. Historically, when populations of jumping mice were larger and more connected, the species could have withstood many of these adverse events (such as floods or wildfire) or recolonized areas after local extirpations. However, the current conditions of small and isolated populations reduce the ability of the jumping

mouse to endure such adverse events, and natural recolonization following local extirpations is impossible in most cases.

We evaluated whether the jumping mouse is in danger of extinction now (i.e., an endangered species) or is likely to become in danger of extinction in the foreseeable future (i.e., a threatened species). The foreseeable future refers to the extent to which the Secretary can reasonably rely on predictions about the future in making determinations about the future conservation status of the species. A key statutory difference between a threatened species and an endangered species is the timing of when a species may be in danger of extinction, either now (endangered species) or in the foreseeable future (threatened species).

Because of the fact-specific nature of listing determinations, there is no single metric for determining if a species is “in danger of extinction” now. In the case of the jumping mouse, the best available information indicates that, while major range reductions (that is the overall geographic extent of the species occurrences) have not happened, habitat destruction and isolation have resulted in significant loss of populations and reductions in total numbers of individuals. These losses are ongoing as at least 11 of the 29 known populations have been significantly compromised since 2011. Without substantial conservation efforts, this trend of population loss is expected to continue and result in an elevated risk of extinction of the species. Many of the threats faced by the species would not have historically been significant, but past reductions in population size and fragmentation (mainly due to habitat loss from grazing) causing isolation of

populations makes the current threats particularly severe. As a result, the species is currently at an elevated risk that stochastic events (e.g., drought, winter storm, wildfire, and floods) will affect all known extant populations making the jumping mouse at a high risk of extinction. Therefore, because no resilient populations currently exist to support persistence of the jumping mouse, it is in danger of extinction throughout all of its range now, and appropriately meets the definition of an endangered species (i.e., in danger of extinction).

Under the Act and our implementing regulations, a species may warrant listing if it is threatened or endangered throughout all or a significant portion of its range. The threats to the survival of this species occurs throughout its range and are not restricted to any particular significant portion of its range. Accordingly, our assessments and determinations apply to this species throughout its entire range.

In conclusion, as described above, the jumping mouse has experienced significant reductions in population numbers (based on habitat reductions and fragmentation), is especially vulnerable to impacts due to its life history and ecology, and is subject to significant current and ongoing threats now. After a review of the best available scientific information as it relates to the status of the species and the five listing factors, we find the New Mexico meadow jumping mouse is in danger of extinction now. Therefore, on the basis of the best available scientific and commercial information, we propose to list the New Mexico meadow jumping mouse as an endangered species, in accordance with section 3(6) of the Act. We find that a threatened species status is not

appropriate for the New Mexico meadow jumping mouse because the overall risk of extinction is high at this time because none of the existing populations are sufficiently resilient to support viable populations and this species is currently in danger of extinction.

### **Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery.

The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (comprising species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (<http://www.fws.gov/endangered>), or from our New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, tribal, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species

cannot be accomplished solely on Federal lands because their range may not occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of New Mexico would be eligible for Federal funds to implement management actions that promote the protection and recovery of the New Mexico meadow jumping mouse. Information on our grant programs that are available to aid species recovery can be found at:

*<http://www.fws.gov/grants>.*

Although the New Mexico meadow jumping mouse is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this



interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species habitat that may require conference or consultation or both as described in the preceding paragraph include livestock grazing, irrigation ditch maintenance and repair, recreational activities associated with Federal agencies or State parks that may affect habitat or the species; issuance of section 404 Clean Water Act permits by the U.S. Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or

offer for sale in interstate or foreign commerce any listed species. Under the Lacey Act (18 U.S.C. 42–43; 16 U.S.C. 3371–3378), it is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 17.32 for threatened species. With regard to endangered wildlife, a permit must be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

Our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of species proposed for listing. The following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive:

- (1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international

boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act.

(2) Unauthorized modification or manipulation of riparian habitat, including mowing or burning of occupied habitats, especially during the active season (generally May through October).

(3) Actions that would result in the unauthorized destruction or alteration of the species' habitat, as described in this rule or within the May 2013 SSA Report (Service 2013). Such activities could include, but are not limited to, the removal of riparian shrubs or herbaceous vegetation by any means.

(4) Unauthorized modification of any stream or water body or removal or destruction of herbaceous vegetation in any stream or water body in which the New Mexico meadow jumping mouse is known to occur.

(5) Unlawful destruction or alteration of New Mexico meadow jumping mouse habitats (e.g., unpermitted instream dredging, impoundment, water diversion or withdrawal, channelization, discharge of fill material) that impairs essential behaviors such as breeding, feeding, or sheltering, or results in killing or injuring a New Mexico meadow jumping mouse.

(6) Capture, survey, or collection of specimens of this taxon without a permit from us pursuant to section 10(a)(1)(A) of the Act.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

### **Peer Review**

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding the scientific information upon which this proposed rule is based. The purpose of peer review is to ensure that our listing determination and critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on this proposed designation of critical habitat.

We will consider all comments and information received during this comment period on this proposed rule during our preparation of a final determination.

Accordingly, the final decision may differ from this proposal.

### **Public Hearings**

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Persons needing reasonable accommodations to attend and participate in a public hearing should contact the New Mexico Ecological Services Field Office at 505-346-2525, as soon as possible. To allow sufficient time to process requests, please call no later than 1 week before the hearing date. Information regarding this proposed rule is available in alternative formats upon request.

## **Required Determinations**

### *Clarity of the Rule*

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of

the rule in the SUPPLEMENTARY INFORMATION section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You also may e-mail the comments to this address: *Exsec@ios.goi.gov*.

*National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

## **References**

A complete list of references used in support of this rulemaking is available on the Internet at <http://www.regulations.gov> within the May 2013 New Mexico Meadow Jumping Mouse Species Status Assessment Report (Service 2013, Literature Cited) and upon request from the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

## **Authors**

The primary authors of this document are the staff members of the New Mexico Ecological Services Field Office.

## **List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

## **Proposed Regulation Promulgation**

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

### **PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

2. In § 17.11(h), add an entry for “Mouse, New Mexico meadow jumping” in alphabetical order under Mammals to the List of Endangered and Threatened Wildlife, to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*

(h) \* \* \*



Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						

Mammals

\* \* \* \* \*

Mouse, New Mexico meadow jumping	Zapus hudsonius luteus	U.S. (NM, AZ, CO)	U.S. (NM, AZ, CO)	E		NA	NA
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Dated: June 4, 2013

Signed: Rowan W. Gould

Acting Director, U.S. Fish and Wildlife Service

Billing Code 4310-55

[FR Doc. 2013-14365 Filed 06/19/2013 at 8:45 am; Publication Date: 06/20/2013]